Response to Workshop Comments
(April 2, 2004)

Universal Waste Authorization for Consumer Electronic Devices
(Alternative Management Standard)
DTSC R-03-19

List of Commentors *

Commentor Number	Organization	Name
1A	Radio Shack Corporation	Pat Loehr
2A-L	Hewlett-Packard	Jeff Kuypers
3A	Institute for Environmental Entrepreneurship	Brian Hamlin
4A-H	Noranda Recycling	Mark TenBrink
5A	EIA	Heather Bowman
6A	California Retailers Association	Pamela Boyd Williams
7A	California CUPA Forum	Michael Dorsey

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Summary of regulations:

SB 20 grants authority to DTSC to develop alternative management standards for electronic hazardous wastes via regulation. Currently, the hazardous waste management standards in Health and Safety Code, HSC section 25201, require a permit for treating and recycling electronic hazardous wastes. These proposed regulations fulfill the permit requirement for most recyclers of electronic wastes by creating, in regulation, a self-implementing authorization. For those recyclers that perform more extensive processing, i.e., recyclers that use heat or chemicals in their process, hazardous waste facility permits will still be necessary.

The proposed regulations spell out requirements similar to those adopted by DTSC in 2001 for cathode ray tubes (CRTs) and CRT devices. The main difference is an allowance for a "scrap metal" option, which allows recyclers to shred electronic wastes without meeting FA/FR and labiality insurance requirements as long as the shredded material still meets the definition of scrap metal. For recyclers that produce residuals that are too fine to qualify as scrap metal, the FA/FR and insurance requirements apply.

1.0 Product Scope

1.1 Product List

Summary of Comments

1A: The commentor recommended adding "desktop or laptop" to the definition of covered electronic device, to clarify that not all devices with flat panel displays, like liquid crystal displays (LCDs), are covered.

2G: The commentor requested written confirmation that DTSC will place its determination of covered electronic devices in regulation.

2H: The commentor believes that the TTLC for lead and copper does not apply to electronic devices because of the elemental metal exemption found in title, 22, California Code of Regulations, section 66261.24(a)(2).

2I: The commentor stated that DTSC biased the test results (towards hazardous) by grinding materials to pass through a 2 mm sieve prior to analysis by TCLP.

2J: The commentor questioned whether the TCLP was applicable to the electronic wastes tested.

2K: The commentor indicated that current research supports that the TCLP may overestimate the concentration of hazardous constituents produced by some wastes in leachate from municipal solid waste landfills.

4A: The commentor recommended a separate list for LCD with and without mercury backlights.

6A: The commentor stated that there is a need to clarify definition of covered electronic device.

Response

1A: The statutory definition of a covered electronic device includes a cathode ray tube, cathode ray tube device, flat panel screen, or any other similar video display device with a screen size greater than four inches measured diagonally and that the Department determines would be hazardous when discarded or disposed.

DTSC has clarified the statutory definition of a covered electronic device in the proposed subdivision (c) of Appendix X. The specific devices that are covered electronic devices for the purposes of Senate Bill 20 have been included in the list found in subdivision (c) of Appendix X of Chapter 11 of the proposed regulations including "desktop LCD monitors" and "laptop computers."
DTSC believes the regulations adequately clarify which electronic devices are covered electronic devices, but the commentor failed to see the proposed Appendix X (c). In the future, DTSC may adopt additional regulations that add other electronic devices to the list.

2G, 6A: DTSC's proposed regulations include a list of devices that are covered electronic devices under the Electronic Waste Recycling Act.

2H: DTSC disagrees with the commentor. No changes to the proposed text were made based upon this comment.

2I: DTSC disagrees with the commentor. No changes to the proposed text were made based upon this comment.

2J: DTSC disagrees with the commentor. The TCLP is one of the specified tests in California regulations which applies to all secondary materials and is therefore applicable to the determination/identification of wastes regulated in the State.

2K: DTSC disagrees with the commentor. DTSC applied the hazardous waste identification methods as adopted in State regulations.

4A: DTSC has tested desktop LCD computer monitors. Based upon the test data, DTSC believes that most LCD monitors would be hazardous for lead and copper. Although, the mercury lamps contained in some LCDs also test hazardous, it is not necessary to separately identify these monitors in the list of presumptive hazardous devices because they are already captured by the proposed text.

1.2 Concurrence Procedure

Summary of Comments

2A: The commentor stated that DTSC has two methods for determining that a covered electronic device listed in Chapter 11, Appendix X is nonhazardous: 1) a "Generator Determination Procedure" pursuant to 66262.11, or a 2) "Department Determination Procedure" pursuant to proposed section 66260.201(c). The commentor recommends that DTSC only adopt the "Generator Determination Procedure" because the generator is responsible for correctly classifying and managing hazardous wastes.

2B: In lieu of 2A above, the commentor recommended that subdivision (c) of Appendix X be amended to include the requirement that a generator notify DTSC within two weeks of determining that a consumer electronic waste is not hazardous waste.

2C: In lieu of 2A or 2B above, the commentor recommended that proposed section 66260.201(c), "Department Determination Procedure" be amended to allow the manufacturer of a covered electronic device to deem that device as non-hazardous if DTSC has not completed its nonhazardous concurrence within 60 days of receipt of application.

2D: The commentor recommended that the application for a nonhazardous concurrence only include test methods and chemicals substance for which the category of electronic device was determined to be hazardous by DTSC.

5A: The commentor stated in its comments to the proposed regulations drafted by CIWMB that there was a need for regulatory provision to allow a manufacturer to test its product for determination of whether it would be a hazardous waste.

Response

2A: Adoption of such requirement is inconsistent with the Electronic Waste Recycling Act. To implement the statute, DTSC must designate which electronic devices are hazardous and therefore "covered electronic devices."

2B: DTSC believes that it is unnecessary and burdensome to require that a generator who determines its waste electronic devices to be nonhazardous to notify DTSC.

2C: Some nonhazardous concurrence applications may be complex and require additional time to process. In most cases, the nonhazardous concurrence will be issued within the allotted time. It would be inconsistent with statute to automatically grant a nonhazardous determination for a device because DTSC is required to make the determination which electronic devices are hazardous.

2D: In processing concurrence application, DTSC only requires test data for constituents or characteristics reasonably applicable to the waste. For example, DTSC would not request the pH data for a consumer electronic device that is typically hazardous for metals.

5A: These provisions had already been included in DTSC's proposed regulations. The commentor may not have known that the determination of whether a material is a hazardous waste or not falls under the authority of the Department rather than the Board.

1.3 Acronym

Summary of Comments

3A: The commentor stated that the acronym CED is confusing because it could mean both covered electronic device and consumer electronic device.

Response

3A: DTSC will amend its regulations to designate consumer electronic devices (CED) as universal waste electronic devices (UWED) to avoid confusion with the SB 20 terminology.

2.0 Waste Management Standards

2.1 Containment

Summary of Comments

2E: The commentor recommended that the containment requirements for whole devices that are stored indoors in a manner that minimizes breakage should not be subject to packaging requirements (pallets/shrink wrapped).

4D: The commentor stated it was unnecessary to: 1) require UWCEDs to be containerized, 2) to require that the UWCEDs be packaged in a "manner adequate to prevent breakage," and 3) require broken UWCEDs to be packaged in closed containers.

4G: The commentor stated that the containment requirement is overly stringent.

Response

2E: DTSC has modified the proposed language to reflect this change.

4D: DTSC concurs and has revised the containment and packaging standards accordingly.

4G: DTSC concurs that the example may appear to be overly stringent. The regulation text has been modified to allow disassembly over a table or workbench as well.

2.2 Storage

Summary of Comments

2F: The commentor recommended allowable storage areas for various types of electronic equipment that are compatible.

Response

2F. DTSC has concurred and has modified its language to reflect this change.

2.3 Transportation

Summary of Comments

2G: The commentor stated that it is difficult to find common carriers that understand the requirements for transporting universal waste.

4H: The commentor stated that the quantity limit of five CEDs is unrealistic.

Response

2G: DTSC will expand its outreach to common carriers and provide additional guidance clarifying the requirements for universal waste transporters. No changes to the proposed text were made based upon this comment.

4H: DTSC agrees and has amended the limit to 220 pounds.

2.4 Exemption

Summary of Comments

4B: The commentor suggested that DTSC regulate CEDs as scrap metal. Or, in other words, the commentor suggested exempting the CEDs from regulation as hazardous waste when recycled.

Response

4B: This alternative was previously rejected during rulemaking R-01-06 (effective Feb., 2003). DTSC believes the universal waste system is the only available regulatory option for CEDs that are identified as RCRA hazardous wastes. Rather than creating two regulatory schemes (i.e., a CED exemption similar to the scrap metal exemption for

non-RCRA hazardous CEDs and universal waste regulations for RCRA hazardous CEDs), DTSC believes adopting the universal waste approach for all CEDs is the best alternative. CEDs destined for recycling are typically reclaimed (i.e., metal values are recovered from the CEDs). Materials that are reclaimed typically do not qualify as "excluded recyclable materials" (ERM) because they do not meet the condition of being "used or reused." Therefore, further clarification of the applicability of Health and Safety Code section 25143.2, either in regulation or a fact sheet, is unnecessary.

2.5 Notification/Reporting

Summary of Comments

4C: The Commentor stated that the notification and annual reports to DTSC (for universal waste CEDs) were unnecessary.

4F: The commentor stated that the requirement to report by types of CEDs processed is unnecessary, burdensome and duplicative of the CIWMB reporting requirements for SB20.

Response

4C: The volume of the electronic waste stream far exceeds that of the other universal wastes. The volume of electronic waste disposed annually in California equals roughly half the volume of all hazardous waste manifested in the State each year. DTSC has proposed notification and reporting requirements (for handlers) to track these wastes and for documentation in lieu of hazardous waste manifests. This tracking is necessary to ensure these wastes are properly handled and for administrative and enforcement functions.

4F: CIWMB's reporting requirements are limited in scope to SB 20 covered electronic devices. DTSC's proposed regulations require recyclers to report type (or product-type) of CED recycled. This information will allow DTSC to monitor the compositions of the wastes recycled under the UW regulations. It will also enable DTSC to direct generators and handlers to facilities that can recycle their CEDs, in the event that those handlers cannot locate a recycler.

Summary of Comments

2.6 Handler Standards

4E: The commentor stated it was unclear whether a process that generated an excluded recyclable material (ERM) would fall under proposed 66273.13/33(d)(3)(C) or 66277.13/33(d)(3)(D).

Response

4E: Neither section (C) nor (D) address the status of an ERM. If a process generates a residual that is also an ERM that meets the definition of scrap metal, the process would be regulated pursuant to proposed 66273.13/33(d)(3)(C). If a process generates an ERM that is not scrap metal (i.e., a residual which is contaminated by a fine powder of particle size less than 100 microns), the process would be regulated pursuant to proposed 66273.13/33(d)(3)(D). DTSC has modified the proposed language to reflect this change.

3.0 General Comments

3.1 Editorial

Summary of Comments

7A: The commentor submitted editorial comments and comments not sufficiently related to the proposed text.

Response

DTSC has corrected the editorial errors.